

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 31214

STATE OF IDAHO,)	
)	2005 Opinion No. 60
Plaintiff-Respondent,)	
)	Filed: October 18, 2005
v.)	
)	Stephen W. Kenyon, Clerk
LAWRENCE ROBINSON,)	
)	
Defendant-Appellant.)	
)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Joel D. Horton, District Judge.

Order denying motion for release from sexual offender registration requirements, affirmed.

Manweiler, Manweiler, Breen & Ball, PLLC, Boise, for appellant. James K. Ball argued.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent. Lori A. Fleming argued.

PERRY, Chief Judge

Lawrence Robinson appeals from the district court's order denying his motion for release from the sexual offender registration requirements. We affirm.

I.

FACTS AND PROCEDURE

In 1986, Robinson pled guilty to forcible sexual penetration by use of a foreign object. I.C. § 18-6608. The district court entered an order withholding judgment and placed Robinson on probation for ten years. Robinson was required to register as a sexual offender pursuant to the Sexual Offender Registration Notification and Community Right-to-Know Act (the Registration Act). *See* I.C. §§ 18-8301 to 18-8326. In 1996, Robinson moved the district court to set aside his guilty plea and dismiss his case, asserting that he had fully complied with the terms of his probation. The district court granted Robinson's request and ordered that Robinson's "plea of guilty . . . to the crime of forcible sexual penetration by use of a foreign object . . . shall be set

aside and the case dismissed.” In 2004, Robinson filed a motion for release from the sexual offender registration requirements. The district court denied Robinson’s motion. Robinson appeals.

II.

STANDARD OF REVIEW

In this case, we must interpret the interaction between the Registration Act and the authority of the courts to dismiss a case following an adjudication of guilt and the entry of an order withholding judgment pursuant to Idaho Code Section 19-2604(1). This Court exercises free review over the application and construction of statutes. *State v. Reyes*, 139 Idaho 502, 505, 80 P.3d 1103, 1106 (Ct. App. 2003). Where the language of a statute is plain and unambiguous, this Court must give effect to the statute as written, without engaging in statutory construction. *State v. Rhode*, 133 Idaho 459, 462, 988 P.2d 685, 688 (1999); *State v. Burnight*, 132 Idaho 654, 659, 978 P.2d 214, 219 (1999); *State v. Escobar*, 134 Idaho 387, 389, 3 P.3d 65, 67 (Ct. App. 2000). The language of the statute is to be given its plain, obvious, and rational meaning. *Burnight*, 132 Idaho at 659, 978 P.2d at 219. If the language is clear and unambiguous, there is no occasion for the court to resort to legislative history or rules of statutory interpretation. *Escobar*, 134 Idaho at 389, 3 P.3d at 67. When this Court must engage in statutory construction, it has the duty to ascertain the legislative intent and give effect to that intent. *Rhode*, 133 Idaho at 462, 988 P.2d at 688. To ascertain the intent of the legislature, not only must the literal words of the statute be examined, but also the context of those words, the public policy behind the statute, and its legislative history. *Id.* It is incumbent upon a court to give a statute an interpretation, which will not render it a nullity. *State v. Beard*, 135 Idaho 641, 646, 22 P.3d 116, 121 (Ct. App. 2001).

III.

ANALYSIS

In 1993, the Idaho Legislature adopted the Sexual Offender Registration Act, which required sexual offenders to register with the sheriff of any Idaho county in which the person resided or was temporarily domiciled. 1993 Idaho Sess. Laws, ch. 155, § 1. In 1998, the Sexual

Offender Registration Act was repealed and the Registration Act was enacted.¹ 1998 Idaho Sess. Laws, ch. 411, §§ 1-2. For purposes of the Registration Act, an “offender” is an individual who has been convicted of an enumerated sexual offense. *See* I.C. § 18-8303(8). Forcible penetration by use of a foreign object is an enumerated offense. *See* I.C. § 18-8304. Like the 1993 Act, the Registration Act requires offenders to register with the sheriff within ten days of coming into any county to establish a residence or temporary domicile. I.C. §§ 18-8304 to 18-8307. Offenders are required to update their registration annually. I.C. § 18-8307(4)(a).² The information received from the offender is forwarded by the county sheriff to a central registry established and maintained by the Idaho State Police. I.C. §§ 18-8303(3), 18-8303(5), 18-8305, 18-8307(3)³.

The provisions of the Registration Act apply to a person who, “[o]n or after July 1, 1993, is convicted of” an enumerated offense. I.C. § 18-8304(1)(a). The Registration Act also applies to a person who “pleads guilty to or has been found guilty [of an enumerated offense] prior to July 1, 1993, and the person, as a result of the offense . . . is under probation . . . on or after July 1, 1993.” I.C. § 18-8304(1)(d).⁴ Idaho Code Section 18-8304(3) defines conviction to mean “that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment or withheld judgment.” Thus, the registration requirements are imposed not only upon those who have received a judgment of conviction for one of the enumerated sexual offenses, but also upon those who have been adjudicated guilty and have received an order withholding judgment. *See State v. Perkins*, 135 Idaho 17, 19, 13 P.3d 344, 346 (Ct. App. 2000). Because Robinson was on probation in July 1993 for an enumerated offense that he had pled guilty to, he was subject to the Registration Act pursuant to Section 18-8304(1)(d).

¹ In 2005, the Registration Act was amended to make updates and corrections. 2005 Idaho Sess. Laws, ch. 233, §§ 1-2. These amendments are not implicated in this appeal.

² Prior to the 2005 amendments, the language now found in Section 18-8307(4)(a) was found in Section 18-8307(1)(a).

³ Prior to the 2005 amendments, the language now found in Section 18-8307(3) was found in Section 18-8307(5).

⁴ Prior to the 2005 amendments, the language now found in Section 18-8304(1)(d) was found in Section 18-8304(1)(c).

Following the completion of Robinson's term of probation, the district court dismissed Robinson's case pursuant to Section 19-2604(1), which provides:

If sentence has been imposed but suspended, or if sentence has been withheld, upon application of the defendant and upon satisfactory showing that the defendant has at all times complied with the terms and conditions upon which he was placed on probation, the court may, if convinced by the showing made that there is no longer cause for continuing the period of probation, and if it be compatible with the public interest, terminate the sentence or set aside the plea of guilty or conviction of the defendant, and finally dismiss the case and discharge the defendant The final dismissal of the case as herein provided shall have the effect of restoring the defendant to his civil rights.

In denying Robinson's motion for release from the sexual offender registration requirements, the district court concluded that dismissal of the underlying criminal case pursuant to Section 19-2604(1) did not excuse Robinson from those requirements and that such release could only be obtained by satisfying the requirements of the Registration Act itself as provided for in I.C. § 18-8310. Section 18-8310(1) states that the following persons may petition for release from the sexual offender registration requirements:

Any person, other than a recidivist, an offender who has been convicted of an aggravated offense, or an offender designated as a violent sexual predator, may, after a period of ten (10) years from the date the person was released from incarceration or placed on parole, supervised release or probation, whichever is greater, petition the district court for a show cause hearing to determine whether the person shall be exempted from the duty to register as a sexual offender.

The crime of forcible sexual penetration by use of a foreign object is an aggravated offense. I.C. § 18-8303(1). Therefore, Robinson is precluded under Section 18-8310 from obtaining release from the registration requirements, regardless of how much time elapses from the date he was placed on probation.

In *Perkins*, the defendant pled guilty to an enumerated sexual offense prior to 1993. The district court entered an order withholding judgment and placed the defendant on probation. Thus, the defendant was required to register as a sexual offender. In 1994, the district court ordered that the withheld judgment be dismissed. Thereafter, the district court granted the defendant's motion for exemption from the registration requirements and ordered that his name be removed from the central registry. On appeal, this Court reversed the district court's order, holding that the defendant remained subject to the Registration Act, including the provisions

found in Section 18-8310, notwithstanding the district court's order of dismissal. *Perkins*, 135 Idaho at 21-22, 13 P.3d at 348-49.

Here, Robinson does not contest that he is precluded from release under Section 18-8310. Instead, Robinson asserts that the district court erred in applying the definition of conviction found in Section 18-8304(3) to his case. Robinson also asserts that, because the district court set aside his guilty plea in addition to dismissing his case, he is no longer a person who has pled guilty and, thus, is no longer subject to the Registration Act.

A. Statutory Definition of Conviction

After a person has been found guilty or has entered a plea of guilty in a criminal case, I.C. § 19-2601(3) authorizes a court to withhold judgment in lieu of entering a judgment of conviction. *See also Perkins*, 135 Idaho at 20, 13 P.3d at 347. The Section 18-8304(3) definition of conviction applies to a person who has pled guilty and received an order withholding judgment. *Perkins*, 135 Idaho at 19, 13 P.3d at 346. In *Perkins*, this Court reasoned that, by providing this definition of conviction and by restricting the opportunity for release from registration in Section 18-8310, the legislature limited the effect of a Section 19-2604(1) dismissal. *Perkins*, 135 Idaho at 21, 13 P.3d at 348. Robinson nevertheless contends that this limitation does not apply to him because the Section 18-8304(3) definition of conviction is relevant to Section 18-8304(1)(a), which applies to a person who “is convicted” of an enumerated offense on or after July 1, 1993, whereas his case falls under Section 18-8304(1)(d), which applies to a person who “pleads guilty or has been found guilty” prior to July 1, 1993. Robinson argues that the legislature only modified the meaning of conviction and did not modify the definition of a guilty plea. Robinson further argues that, because Section 18-8304(1)(d) does not contain the word “conviction,” neither the Section 18-8304(3) definition nor the limitation on the effect of a Section 19-2604(1) dismissal apply to him. We disagree.

Like the Registration Act, the driving under the influence (DUI) penalty enhancing statute applies to a person who has been found guilty or has pled guilty to successive DUI offenses within five years, notwithstanding the form of judgments or withheld judgments. *See* I.C. §§ 18-8004, 18-8005(4) to 18-8005(7). This Court interpreted the “has been found guilty or has pled guilty” language as clarifying that the finding of guilt, not the imposition of the sentence, must fall within the five-year period. *See State v. Scott*, 135 Idaho 457, 459, 19 P.3d 771, 773 (Ct. App. 2001). Similarly, the “pleads guilty or has been found guilty” language found

in Section 18-8304(1)(d) specifies the procedural event that must have occurred prior to July 1, 1993, in order to subject the person to the Registration Act. In light of the Section 18-8304(3) definition of conviction, had the legislature utilized the word “conviction” in Section 18-8304(1)(d) it would not have been clear whether the date of the adjudication of guilt or the entry of a judgment of conviction or order withholding judgment must have occurred prior to 1993.

The “pleads guilty or has been found guilty” language found in Section 18-8304(1)(d) is incorporated in the Section 18-8304(3) definition of conviction. Outside the context of the Registration Act, a judgment of conviction has been defined as the written record of a criminal judgment, consisting of the plea, the verdict or findings, the adjudication, and the sentence. BLACK’S LAW DICTIONARY 860 (8th ed. 2004). The Section 18-8304(3) definition alters the meaning of conviction insofar as it eliminates the requirement that a conviction include a judgment, but does not alter the requirement that there be an adjudication of guilt. Robinson pled guilty to an enumerated offense prior to 1993, received an order withholding judgment, and was on probation for that offense after 1993. Accordingly, Robinson was “convicted” of an enumerated offense and was an “offender” subject to the registration requirements. *See* I.C. §§ 18-8303(8), 18-8304, 18-8307. Thus, we conclude that the district court did not err by applying the Section 18-8304(3) definition of conviction to Robinson’s case.

B. Setting Aside Guilty Plea

Where a defendant has at all times complied with the terms and conditions of his or her probation, the court may either terminate the sentence or set aside the guilty plea or conviction and finally dismiss the case. I.C. § 19-2604(1). Robinson asserts that a Section 19-2604(1) dismissal that is obtained after the district court sets aside a guilty plea has broader ramifications than a Section 19-2604(1) dismissal that is entered without the district court expressly setting aside that adjudication. Robinson contends that, when the district court set aside his guilty plea, he ceased being a person who had pled guilty to an enumerated sexual offense and, therefore, was no longer subject to the Registration Act.

The power to withhold judgment was conferred upon the courts by statute and, therefore, the legislature also has the authority to abrogate or limit that power. *Perkins*, 135 Idaho at 21, 13 P.3d at 348. It is a basic tenet of statutory construction that a more general statute should not be interpreted to encompass an area already covered by a special or more specific statute. *State v. Hagerman Water Right Owners, Inc.*, 130 Idaho 736, 743, 947 P.2d 409, 416 (1997). A specific

statute will prevail over a general statute to the extent of any repugnancy between them or if the specific and the general statute are necessarily inconsistent. *State v. Paul*, 118 Idaho 717, 720, 800 P.2d 113, 116 (Ct. App. 1990). Statutes should be harmonized to the extent reasonably possible. *Id.* A specific statute will prevail to the exclusion of a general statute only where the two are in irreconcilable conflict. *Id.* Accordingly, we will evaluate the nature and purpose of the Registration Act and of Section 19-2604(1) to determine whether they are in conflict. Being more specific, the Registration Act will control to the exclusion of Section 19-2604(1) where the two statutes cannot be reconciled.

The purpose of the authority granted by Section 19-2604(1) to set aside a guilty plea and dismiss a case is to provide an opportunity for rehabilitation and to spare the defendant, particularly a first offender, from the burden of a criminal record. *State v. Woodbury*, 141 Idaho 547, 548-49, 112 P.3d 835, 836-37 (Ct. App. 2005). The dismissal of a criminal charge after judgment has been withheld is an exercise of leniency and not an expression of doubt about the defendant's guilt. *Woodbury*, 141 Idaho at 549, 112 P.3d at 837; *Perkins*, 135 Idaho at 21, 13 P.3d at 348. Aside from the restoration of a defendant's civil rights, Section 19-2604(1) does not address specific ramifications of a final dismissal. Although a dismissal order following a withheld judgment depreciates the import on the defendant's record to some extent, it does not entirely remove the adjudication of guilt. *Woodbury*, 141 Idaho at 549, 112 P.3d at 837.⁵ The

⁵ We note that in other cases, Section 19-2604(1) has been referred to as an "expungement" statute. See e.g. *State v. Schumacher*, 131 Idaho 484, 486-87, 959 P.2d 465, 467-68 (Ct. App. 1998); *State v. Deitz*, 120 Idaho 755, 757-58, 819 P.2d 1155, 1157-58 (Ct. App. 1991). As defined by *Black's Law Dictionary*, to expunge means to erase or destroy and the expungement of a record refers to the removal of a conviction from a person's criminal record. BLACK'S LAW DICTIONARY 621 (8th ed. 2004). Notwithstanding this Court's previous references to Section 19-2604(1) as an expungement statute, because a final dismissal does not remove an adjudication of guilt for all purposes, Section 19-2604(1) does *not* authorize expungement as defined by *Black's Law Dictionary*. Courts have used the term expungement to facilitate the discussion of rehabilitative statutes, which do not technically expunge a person's record. See *Lujan-Armendariz v. INS*, 222 F.3d 728, 734 n.11 (9th Cir. 2000). However, the less than precise use of the term "expungement" may have contributed to questions presented by cases such as the instant one, where it is argued that a Section 19-2604(1) dismissal effectuates the complete elimination of the consequences of a conviction. Accordingly, to improve clarity in this area of the law, we encourage the consistent and precise use of the term expungement. We note, for example and comparison, the Juvenile Corrections Act, I.C. § 20-525A, and its explanation of expungement proceedings for juvenile offenders.

Idaho legislature has specified that for many types of offenses, including the Registration Act, a withheld judgment will be treated as a prior conviction. *See id.*

The legislature enacted the Registration Act because it found that sexual offenders present a significant risk of reoffense and that efforts of law enforcement agencies to protect their communities, conduct investigations and quickly apprehend offenders are impaired by the lack of current information available about individuals who have been convicted of sexual offenses who live within their jurisdiction. I.C. § 18-8302. The imposition of restrictive measures on sexual offenders adjudged to be dangerous is a nonpunitive governmental objective. *Smith v. Doe*, 538 U.S. 84, 93 (2003). The Registration Act is remedial in nature and provides an essential regulatory purpose that assists law enforcement and parents in protecting children and communities.⁶ *Ray v. State*, 133 Idaho 96, 100-01, 100, 982 P.2d 931, 935-36 (1999).

Section 18-8310 provides specific procedures governing when a sexual offender may obtain release from registration, including the requirement that the sexual offender provide clear and convincing evidence that he or she is not a risk to commit a new violation for any violent or enumerated offense. In *State v. Knapp*, 139 Idaho 381, 79 P.3d 740 (Ct. App. 2003), the defendant argued that the district court erred by concluding that his evidence, which demonstrated that he was at low risk of reoffending, was insufficient to satisfy the “not at risk” standard. This Court disagreed, reasoning that the legislature did not contemplate many sexual offenders would satisfy the statutory requirements for release. *Knapp*, 139 Idaho at 383, 79 P.3d at 742. This Court also noted that the 1993 Sexual Offender Registration Act required offenders to register for just ten years, whereas the Registration Act requires lifetime registration. Thus, the legislature has embraced an increasingly restrictive approach to the release of offenders from the registration requirements. *Knapp*, 139 Idaho at 383, 79 P.3d at 742. This Court concluded

⁶ In contrast to the Registration Act, the purpose of the enhanced DUI penalty statute is to encourage rehabilitation and deter recidivism. *See Deitz*, 120 Idaho at 757, 819 P.2d at 1157. The DUI penalty enhancement statute imposes punitive measures designed to impress upon the defendant the serious consequences of subsequent violations and to deter the defendant from committing repeat offenses. *See State v. Nickerson*, 121 Idaho 925, 928-29, 828 P.2d 1330, 1333-34 (Ct. App. 1992). Thus, the instant case can be distinguished from cases such as *Deitz*, where this Court noted that the effect of a dismissal setting aside a guilty plea is distinct from a dismissal in which the trial court does not expressly set aside the adjudication of guilt. *See Deitz*, 120 Idaho at 757, 819 P.2d at 1157.

that the legislature intended sexual offenders petitioning for release from registration to carry a very heavy burden of proof. *Knapp*, 139 Idaho at 384, 79 P.3d at 743.

Robinson neither disputes the purpose of the Registration Act nor that he cannot meet the requirements for release set forth in Section 18-8310. Rather, Robinson contends that those provisions are not applicable to him because he is no longer subject to the Registration Act. Robinson relies on *Manners v. State, Bd. of Veterinary Med.*, 107 Idaho 950, 694 P.2d 1298 (1985) and Judge Schwartzman's special concurrence in *Perkins* for the proposition that, because his guilty plea no longer exists, he is no longer a person who has pled guilty within the meaning of Section 18-8304(d). In *Manners*, a veterinarian pled guilty to a controlled substance violation, received a suspended sentence, and was placed on probation. Following successful completion of probation, the district court allowed the veterinarian to withdraw his guilty plea. The court then set aside the veterinarian's conviction and dismissed his case pursuant to Section 19-2604(1). Thereafter, the Board of Veterinary Medicine revoked the veterinarian's license, relying solely on its authority to revoke a license when a licensed veterinarian has been convicted of a felony. The veterinarian appealed, arguing that, because the district court dismissed his case, his conviction no longer existed. The Idaho Supreme Court agreed, holding that a felony conviction that has been vacated and the charge dismissed cannot be the basis for revocation of a veterinary license. *Manners*, 107 Idaho at 952, 694 P.2d at 1300. However, the Court noted that "nowhere in that statute is there language which limits or conditions the rights which [a] defendant regains" following a Section 2604(1) dismissal and, thus, concluded that the veterinarian's vacated conviction could not be the basis for revocation of his veterinary license. *Id.*

In his special concurrence in *Perkins*, Judge Schwartzman noted that the dismissal of the defendant's case was not a "true dismissal" and indicated that he would have voted differently if the defendant's original guilty plea had been set aside and the case fully dismissed. *Perkins*, 135 Idaho at 22-23, 13 P.3d at 349-50. Similar to *Manners*, Judge Schwartzman reasoned that, if the guilty plea had been set aside, there would have been no adjudication of guilt to subject the defendant to the Registration Act. *Perkins*, 135 Idaho at 22-23, 13 P.3d at 349-50. Robinson contends that his case presents the situation contemplated in Judge Schwartzman's concurrence and that we should distinguish Robinson's case from *Perkins* on the basis that the district court set aside his guilty plea. We are not so persuaded.

We hold that the district court's final dismissal did not entirely remove the legal effects of Robinson's guilty plea. *See Woodbury*, 141 Idaho at 549, 112 P.3d at 837. By adopting the Registration Act, the legislature purposefully limited Idaho courts' power to afford clemency to sexual offenders through the withholding of judgment and final dismissal under Section 19-2604(1). *See Perkins*, 135 Idaho at 21, 13 P.3d at 348. Robinson urges us to interpret the statutes at issue in a way that would empower the courts to release sexual offenders who have complied with the terms of their probation from the registration requirements without requiring them to satisfy the heavy burden required by Section 18-8310. Section 19-2604(1), with its goals of rehabilitation and deterrence, does not address the safety concerns specific to sexual offenders that led to the enactment of the Registration Act. Thus, the interpretation advanced by Robinson would allow a general statute to govern an area covered by a specific statute and would place Section 19-2604(1) into irreconcilable conflict with the Registration Act. Further, Section 18-8310 plainly precludes sexual offenders such as Robinson, who have been convicted of an aggravated offense, from release from the registration requirements. *See* I.C. §§ 18-8303(1), 18-8310. To interpret the statutes at issue in such a way that sexual offenders expressly precluded from release under Section 18-8310, could then obtain release through Section 19-2604(1), would render the Registration Act a nullity and fail to give effect to the legislature's express intent that sexual offenders not be released from registration requirements absent conformance with the criteria found in Section 18-8310.⁷

Moreover, we are not persuaded by Robinson's attempt to create a distinction between cases where the district court sets aside a guilty plea from cases where a plea was not expressly set aside in the language of the underlying dismissal order. The requirements that must be met before a trial court is authorized to dismiss a case under Section 19-2604(1) are the same,

⁷ In *Perkins*, the majority reached the identical result in reviewing an administrative rule, I.D.A.P.A. 11.10.03.011.08.c, which utilized I.C. § 19-2604(1) to effectuate an offender's release from the Registration Act. There, the Court held:

To the extent that I.D.A.P.A. 11.10.03.011.08.c provides that sex offender registration records will be expunged where the court has withheld judgment and subsequently dismissed the charge under I.C. § 19-2604(1), without compliance under I.C. § 18-8310, the rule is inconsistent with §§ 18-8304(3) and 18-8310 and is therefore ineffective.

regardless of whether the case is dismissed by terminating the sentence or by setting aside a guilty plea or conviction. If a charge has been dismissed, there cannot at the same time remain a conviction for that charge; upon dismissal there is no longer a case in which a judgment of conviction can stand. *State v. Dorn*, 140 Idaho 404, 406, 94 P.3d 709, 711 (Ct. App. 2004). An order that purports to dismiss a criminal case without vacating the conviction is invalid. *Id.* Similarly, a guilty plea in a criminal case would necessarily be vacated upon the final dismissal of the underlying criminal case, regardless of whether the order expressly stated that the plea was being set aside.

The Registration Act comprehensively governs the registration of sexual offenders and, therefore, we will not interpret Section 19-2604(1) as granting courts the authority to release offenders from the registration requirements. Rather, the provisions of the Registration Act offer the exclusive means of obtaining that relief. Thus, Robinson cannot circumvent the specific criteria for release from the registration requirements by obtaining dismissal under Section 19-2604(1), regardless of whether the district court's order indicated that the guilty plea was being set aside.

III.

CONCLUSION

The final dismissal of Robinson's case restored his civil rights and may have released him from other ramifications of his guilty plea. However, once Robinson was subject to the sexual offender registration requirements, the only relevant authority for securing release from those requirements was the Registration Act. Accordingly, the district court did not err by finding that the final dismissal of Robinson's case did not release him from the registration requirements. The order of the district court denying Robinson's motion for release from the sexual offender registration requirements is affirmed.

Judge GUTIERREZ, **CONCURS.**

Judge Pro Tem SCHWARTZMAN, **DISSENTING**

Perkins, 135 Idaho at 22, 13 P.3d at 349 (footnote omitted).

I respectfully dissent. This case brings us back full circle to *Manners v. State Bd. of Veterinary Medicine*, 107 Idaho 950, 694 P.2d 1298 (1985), following a trilogy of cases from the Idaho Court of Appeals wrestling with the ancillary legal effects of I.C. § 19-2604(1), Idaho’s so-called “expungement” or “discharge” statute. *See and compare*, *State v. Deitz*, 120 Idaho 755, 819 P.2d 1155 (Ct. App. 1991) (with Chief Judge Walters dissenting); *State v. Perkins*, 135 Idaho 17, 13 P.3d 344 (Ct. App. 2000) (with Judge Schwartzman specially concurring); and *State v. Dorn*, 140 Idaho 404, 94 P.3d 709 (Ct. App. 2004) (with Judge Gutierrez dissenting).

Manners stands for the proposition that where a judgment has been vacated and the plea set aside, it is a *nullity* and the effect is as if it had never been rendered at all. Thus, where the underlying charge is dismissed pursuant to I.C. § 19-2604(1), the conviction is “erased” and becomes “non-existent.” *Manners*, 107 Idaho at 952, 694 P.2d at 1300. The Court specifically recognized that Section 19-2604(1) has the effect of restoring a defendant to his *civil rights*: “Nowhere in that statute is there language which limits or conditions the rights which defendant regains.” *Id.* Accordingly, *Manners* held that such a vacated felony conviction and dismissal cannot be the basis for revocation of a veterinary license.

In *Deitz*, the majority distinguished *Manners*, noting that the district court had not set aside the plea of guilty as it was empowered to do under I.C. § 19-2604(1). *Deitz*, 120 Idaho at 757, 819 P.2d at 1157. The Court held that I.C. § 18-8005(4) makes the operative event for an enhanced charge of DUI the fact that the defendant has pled or been found guilty of a prior violation of I.C. § 18-8004 within five years.

Because Deitz’s plea of guilty was within five years, *and it was not specifically set aside when the district court dismissed the charges against him*, the dismissal of the prior charges did not reverse or vacate the determination of Deitz’s guilt for the purposes of I.C. § 18-8005(4).¹

Id. at 758, 819 P.2d at 1158. (Emphasis added).

In *Perkins*, I concurred specially, conditioned upon the continued viability of the *Deitz* decision and the peculiarities of the dismissal under I.C. § 19-2604(1). However, I also added:

Were the original plea of guilty set aside and the case fully and finally dismissed pursuant to I.C. § 19-2604(1), thus completing the *statutory*

¹ Had the formal dictates of I.C. § 19-2604(1) been followed and the guilty plea to the first DUI set aside, the reader is left with the abiding implication that the result would have been different.

expungement process, I would vote differently herein. A true expungement would leave no plea of guilty or finding of guilt upon which the Sexual Offender Registration Act could hang its jurisdictional hat. Such is not the case here!

Perkins, 135 Idaho at 22-23, 13 P.3d at 349-50.

But such is the case here! The operative language of I.C. § 18-8304(1)(d), like the DUI penalty enhancing statute, is whether the person “pleads guilty to or has been found guilty of” an enumerated sexual offense. Where the language of a statute is plain and unambiguous, this Court must give effect to the statute as written. In *Perkins*, because the defendant’s guilty plea was left undisturbed, he continued to fall under the plain language of the Registration Act. Here, however, Robinson is no longer a person who has pled guilty and, therefore, he does not fit within the relevant definition or language of the statute. His plea of guilty has been set aside; it is a nullity, non-existent, and the effect is as if it had never been rendered at all. This case falls within the rubric of *Manners*, *supra*, which is still controlling precedent and must guide my analysis.

Moreover, I.C. § 19-2604 was amended in 1989 to add a new Subsection 3. That amendment provides as follows:

Subsection 2 of this section shall not apply to any judgment of conviction for a violation of the provisions of sections 18-1506, 18-1507 or 18-1508, Idaho Code. A judgment of conviction for a violation of the provisions of any section listed in this subsection *shall not be expunged* from a person’s criminal record.²

(Emphasis added). Although the Idaho Legislature could easily have excluded the provisions and requirements of the 1993 Sexual Offender Registration Act or amended Registration Act from the ameliorative effects of I.C. § 19-2604 as it did with the above listed statutes, it chose not to.

Finally, the principle of lenity mandates that criminal regulatory statutes be read narrowly and, where ambiguity exists, be strictly construed in favor of defendants. *State v. Rhode*, 133 Idaho 459, 462, 988 P.2d 685, 688 (1999); *State v. Thompson*, 101 Idaho 430, 437, 614 P.2d 970, 977 (1980); *State v. Harrington*, 133 Idaho 563, 566, 990 P.2d 144, 147 (Ct. App. 1999); *State v. Nab*, 112 Idaho 1139, 1141, 739 P.2d 438, 440 (Ct. App. 1987). This principle is especially significant in light of the lenity policy afforded by I.C. § 19-2604. It should be remembered that Robinson pled guilty in 1986, predating the Sexual Offender Registration Act by some seven

² This provision was analyzed in *State v. Dorn*, *supra*.

years. Robinson successfully completed his probation in 1996 and had his guilty plea set aside and case finally dismissed. Another eight years elapsed before he applied to the court for release from the registration requirements and for expungement of his name from the central registry. Had Robinson known in 1986 that the law would be changed in 1993 and that he would now be subject to the stigmata and potential criminal ramifications of the Registration Act for the rest of his life, a different plea bargain may well have been effectuated.

But the bottom line is this: the *Manners* decision should control the course and outcome of this case. The requirements of the Registration Act simply cannot apply where there is no plea of guilty or finding of guilt upon which to hang its jurisdictional hat. Robinson must be restored to his full panoply of civil rights.